

1 John Neil Stephenson (SBN 12497)
2 STEPHENSON LAW, PLLC
3 1770 Verdi Vista Court
4 Reno, Nevada 89523
5 Tel: 510-502-2347
6 Fax: 775-403-1773
7 Email: johnstephensonlaw@gmail.com
8 Web: jstephensonlaw.com
9 *Counsel for Plaintiffs/Counterdefendants*

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA – RENO (BRANCH)

**DAVID C. ARMSTRONG, as Trustee of
THE R.J. ARMSTRONG LIVING
TRUST, a Nevada testamentary entity,
and
DAVID C. ARMSTRONG, an individual.**

Plaintiffs,
vs.

**SUSAN HELEN ARMSTRONG
HOLMES, an individual.**

Defendant.

**SUSAN HELEN ARMSTRONG
HOLMES, an individual,**

Counterclaimant,

**DAVID C. ARMSTRONG, as Trustee of
THE R.J. ARMSTRONG LIVING
TRUST, a Nevada testamentary entity,
and
DAVID C. ARMSTRONG, an individual.**

Counterdefendants

Case No.: 3:22-cv-00375-ART-CSD
**PLAINTIFFS/COUNTERDEFENDANTS'
SECOND AMENDED COMPLAINT**

SECOND AMENDED COMPLAINT

Pursuant to this Court's Order [#97, p. 5 line 14 to p. 6 line 20], Plaintiffs David C. Armstrong, as Trustee of the R.J. Armstrong Living Trust and David C. Armstrong, individually, through their undersigned counsel, hereby submit their Second Amended Complaint:

I. PARTIES

1. Plaintiff David C. Armstrong brings suit as Trustee on behalf of the R.J. Armstrong Living Trust, a Nevada testamentary entity.
 2. Plaintiff David C. Armstrong also brings suit in his individual capacity and is an adult resident of Washoe County, Nevada.
 3. Defendant Susan Helen Armstrong Holmes is an adult resident of Arizona.

II.

JURISDICTION AND VENUE

4. This is an unlimited civil case as Plaintiffs seeks damages and injunctive relief far in excess of the twenty-five thousand (\$25,000.00) jurisdictional limit.

5. Venue in the Second Judicial District Court of Nevada, Washoe County, is proper as Plaintiffs reside in Washoe County and the parties to the subject Confidential Settlement Agreement and Release, attached as Exhibit 1 (p. 11, ¶14) have agreed to resolve any disputes they may have arising from the Agreement in this Court under Nevada law.

III. FACTS

6. Richard J. Armstrong, the Settlor of the R.J. Armstrong Living Trust, recently passed away on April 21, 2022 at the age of 95-years old from natural causes.

1 7. Plaintiff David C. Armstrong, Defendant Susan Helen Holmes and her children,
2 William Armstrong Holmes and Jennifer Nancy Holmes, are beneficiaries of the R.J. Armstrong
3 Living Trust.

4 The Settlement Agreement and Release

5 8. On May 9, 2022, Plaintiff David C. Armstrong, as Trustee on behalf of the R.J.
6 Armstrong Living Trust, Plaintiff David C. Armstrong, in his individual capacity, Defendant
7 Susan Helen Holmes, William Armstrong Holmes, and Jennifer Nancy Holmes entered in a
8 Confidential Settlement Agreement and Release (“Agreement”). Exhibit 1.

9 9. The parties were independently represented by counsel in the negotiation of this
10 Agreement, and their counsel approved its form and content. Exhibit 1 at ARMSTRONG 0019.

11 10. Section 9, Non-Disparagement, of the Agreement provides:

12 9. Non-Disparagement. The Settling Parties agree to refrain from
13 public or private statements to any third party (by word of mouth, in
14 writing, or by email, social media, or any other written or electronic means)
15 which would disparage an opposing party (regardless of whether such
16 statements are believed to be true), including, but not limited to, any
17 negative or critical remarks concerning the other, including management
18 style, methods of doing business, treatment and conduct towards and with
19 Richard J. Armstrong, and/or relationships any other family members. In
20 the event of a breach of this provision, a court of competent jurisdiction can
21 enforce the provision as material to this Agreement; however, the sole
22 remedy available to the Parties is injunctive relief and reimbursement of
23 attorneys’ fees and costs to enforce the provision.

24 Exhibit 1 at ARMSTRONG 0009.

25 Written Communications to Plaintiffs’ Counsel

26 11. On Sunday, May 22, 2022 at 8:13 p.m. - on a weekend and at around bedtime -
27 Defendant Susan Helen Holmes texted Plaintiffs’ counsel wherein she accused Plaintiff
28

1 Armstrong of “inheritance theft,” “betray[ing] his family for money,” and “let[ting] greed take
2 over love of family.” Exhibit 2 at ARMSTRONG 20-22.

3 12. In response, Plaintiffs’ counsel informed Defendant Holmes that her statements
4 and accusations were a breach of Section 9 of the Agreement; if further accusations a lawsuit
5 would ensue; and to immediate cease and desist. Exhibit 2 at ARMSTRONG 22.
6

7 13. Undeterred, on July 5, 2022 at 8:27 p.m. - again after business hours and around
8 bedtime – Defendant Holmes texted Plaintiffs’ counsel wherein she accused Plaintiff Armstrong
9 of “robb[ing] me and my children and ALL my dad’s grandchildren of their inheritance . . . The
10 love of money is the root of ALL EVIL. DAVE chose money over family. Period. Pure
11 GREED. . . At least I can say I have the love of both my parents . . . I’m glad my dad dies so
12 He’s no longer in the evil clutches of David . . . I have a very long line of family who would love
13 to expose Dave for who he really is so bring it on.” Exhibit 2 at ARMSTRONG 24-25.
14

15 14. In response, Plaintiffs’ counsel informed Defendant Holmes that Plaintiff
16 Armstrong had recently been in a major motor vehicle accident a few weeks ago during which
17 his car was totaled and that the results of his subsequent medical exam revealed possible lung
18 and/or prostate cancer. Exhibit 2 at ARMSTRONG 25. Defendant Holmes responded: “This
19 will be no Big Surprise to Dave . . . that’s GOD[‘s] wishes for him.” Exhibit 2 at ARMSTRONG
20 25-26.
21

22 15. The next day on July 6, 2022, Defendant Holmes wrote a hand-written letter and
23 texted a photo of it to Plaintiffs’ counsel wherein she stated:
24

25 Losing my inheritance was extremely insignificant compared to the awful
26 realization that my own brother did not consider my lifelong relationship to
him worth a single penny.
27
28

1 Exhibit 2 at ARMSTRONG 27-28.

2 16. A week later, on July 13, 2022, Defendant Holmes texted Plaintiffs' counsel and
3 accused Plaintiff Armstrong of "tax evasion" and affirmed that "I don't care if I lose every
4 penny[.] I must have the truth in order to move forward." Exhibit 2 at ARMSTRONG 0029.

5 17. Defendant Holmes then emailed Plaintiffs' counsel again disparaging Plaintiff
6 Armstrong of wrongdoing and accusing: "Unfortunately I think greed has overtaken him."

7 Exhibit 4 at ARMSTRONG 0043.

8 Written Communications to Plaintiff Armstrong's minor son, Spencer

9 18. On July 7, 2022 at 8:57 p.m., again around bedtime, Defendant Holmes texted her
10 nephew, Plaintiff Armstrong's minor son, Spencer (age 17) wherein she degraded Plaintiff
11 Armstrong's ex-wife, Yadira, as a "blonde bald devil and blonde bimbo." Exhibit 3 at
12 ARMSTRONG 30. She then personally attacked and disparaged Spencer's father, Plaintiff
13 Armstrong: "Hopefully you won't follow in your father['s] footsteps of loving money more than
14 family. Your really now have no family left as your dad betrayed his family due to his pure
15 GREED! The love of money is the root of all evil. . . Hopefully your dad will grow a conscience
16 and do the right thing[.] He robbed me and my kids and all the other grandkids of their
17 inheritance and that's SO WRONG. I HOPE YOU DON'T follow in his footsteps of loving
18 money more than family. It's so not worth it. It has broken granny's heart . . . All pop['s] blood
19 money will never bring you true happiness. I pray you will find your way in life and NOT
20 worship money as your God as it will destroy you." Exhibit 3 at ARMSTRONG 30-32.
21
22
23
24

1 19. On July 23, 2022, Defendant Holmes texted her nephew, Spencer: “ . . . Too bad
2 your dad chose love of money over love of family. He will never know happiness because of his
3 greed.” Exhibit 3 at ARMSTRONG 0034.

4 20. The next day, on Sunday July 24, 2022 at 9:31 a.m., again at bedtime and on a
5 weekend, Defendant Holmes texted her nephew, Spencer: “Too bad your dad put money over
6 family. Will lay my mom to rest here. Your dad broke her heart. Came to see her once in 8
7 years with his devil woman [Yadira]. Live with that.” Exhibit 3 at ARMSTRONG 0037.

9 21. On July 25, 2022, Defendant Holmes texted Spencer and threatened to turn over
10 videos of him allegedly abusing his grandfather, Settlor Richard Armstrong, to law enforcement
11 if Plaintiff Armstrong did not meet the terms of the Agreement. Exhibit 3 at ARMSTRONG 39.
12 She then further forwarded a text that she had sent to Plaintiffs’ counsel wherein she had
13 threatened: “I’m really sorry it has come to this but the fact your dad doesn’t care that the videos
14 of you abusing Pops will now become evidence says it all. He won’t even protect his only son
15 from guilt and shame truly is beyond heartbreaking. The entire family knows how he screwed
16 his entire family expect you of course for his pure greed and love of money. No one can save you
17 or your dad his lies and dishonest will now be exposed” Exhibit 3 at ARMSTRONG 41.

18 Thereafter in a subsequent message, she again accused Plaintiff Armstrong of committing “tax
19 evasion” for which he deserves “a prison sentence.” Exhibit 3 at ARMSTRONG 42.

20 Communications to Plaintiff Armstrong’s other family members

21 22. As set forth above, Defendant Holmes has accused Plaintiff Armstrong of crimes,
22 moral turpitude, and bad character to their entire family “the entire family knows how he
23 screwed his entire family.” Exhibit 2 at ARMSTRONG 41. It is Plaintiffs’ understanding and
24

1 belief that these accusations have been repeatedly made to Defendant Holmes' children, William
2 Armstrong Holmes, and Jennifer Nancy Holmes (Plaintiff Armstrong's niece and nephew).

3 **Bad Faith**

4 **23. Section 11, Good Faith, of the Agreement provides:**

5 **It is agreed and understood that this Agreement is entered into in good
6 faith. The Settling Parties warrant that no promise or inducement has
7 been offered except as herein set forth, and that this Agreement is
8 executed without reliance upon any statement or representation by the
9 Settling Parties, their attorneys, representatives or agents not contained
within this Agreement.**

10 **Exhibit 1 at ARMSTRONG 0010.**

11 **24. Ms. Holmes entered in the Agreement in bad faith in violation of Section 11
12 with the aim of collecting the settlement sum and without the intent to honor her obligation
13 to stop disparaging Mr. Armstrong and his handling of his father's Trust.**

14 **25. Ms. Holmes' bad faith intentions are demonstrated by:**

15 **(1) the timing of her defamatory remarks (they started almost
16 immediately after the Settlement Agreement was signed).**

17 **(2) their repeated frequency, number, and extent (made to Spencer,
18 Plaintiffs' counsel, and other family members).**

19 **(3) the nature of the statements (which include serious accusations of
20 criminal wrongdoing such as theft, fraud, and elder abuse and also threats).**

21 **(4) they continued even after multiple demands by Plaintiffs, including
22 one in writing, that she cease and desist.**

23 **(5) Ms. Holmes' own admission as stated in her text of July 13, 2022 to
24 Plaintiffs' counsel wherein she accused Plaintiff Armstrong of "tax evasion" and**

affirmed that “I don’t care if I lose every penny[.] I must have the truth in order to move forward.” Exhibit 2 at ARMSTRONG 0029.

IV.

FIRST CAUSE OF ACTION
Breach of Contract

26. Plaintiffs reallege and incorporate by reference the allegations set forth above as though fully restated herein.

27. Plaintiffs and Defendant Holmes are parties to the Agreement. Exhibit 1.

28. Defendant Holmes has failed, and continues to fail, to refrain from disparaging Plaintiff Armstrong to Plaintiffs' counsel, to his son Spencer, and to the other members of the family. Exhibits 2-4; *see Paragraphs 8 to 22 above*. Defendant Holmes continues to make these disparaging remarks, which include serious accusations of wrongdoing and criminal conduct (theft, tax evasion, and elder abuse), in defiance of a cease and desist demand from Plaintiffs' counsel. *See Paragraph 12 above*. Pursuant to Section 9 of the Agreement, it is immaterial whether Defendant Holmes personally believes that her disparaging remarks are true or not.

29. Defendant Holmes has breached, and continues to breach, her duties under the Agreement, and in defiance of a cease and desist instruction from Plaintiffs' counsel, thereby excusing Plaintiffs from performing theirs as a condition subsequent thereto.

30. Plaintiffs have sustained damages as a foreseeable result thereof and will seek injunctive relief at trial.

11

111

31. Plaintiffs have been forced to hire the law firm of Stephenson Law, PLLC to prosecute this action and, as such, Plaintiffs are entitled to their costs and attorneys' fees incurred to litigate this action pursuant to Sections 9 and 15 of the Agreement.

SECOND CAUSE OF ACTION

32. Plaintiffs reallege and incorporate by reference the allegations set forth above as though fully restated herein.

33. Plaintiffs and Defendant Holmes are parties to the Agreement. Exhibit 1.

33. Nevada law imposes upon parties to a contract a covenant of good faith and fair dealing, and Defendant Holmes owed a duty of good faith and fair dealing to Plaintiff Armstrong in performing her duties set forth in the Agreement.

34. Defendant Holmes breached that duty of good faith and fair dealing by disparaging Plaintiff Armstrong to Plaintiffs' counsel, to his son Spencer, and to the other members of the family. These defamatory remarks include serious allegations of criminal wrongdoing (theft, tax evasion and elder abuse). Exhibits 2-4; *see Paragraphs 8 to 22 above.* Defendant Holmes continues to make these disparaging remarks in defiance of a cease and desist demand from Plaintiffs' counsel (*see Paragraph 12 above*) and has stated that she will persist even if costs her "every penny" she has despite her agreement to settle her allegations and claims as set forth the Agreement. Pursuant to Section 9 of the Agreement, it is immaterial whether Defendant Holmes personally believes that her disparaging remarks are true or not.

35. Plaintiffs' justified expectations under the contract were therefore denied.

36. Plaintiffs have suffered damages as a foreseeable result thereof in excess of \$25,000.00, in an amount to be proven at trial.

37. Plaintiffs have been forced to hire the law firm of Stephenson Law, PLLC to prosecute this action and, as such, Plaintiffs are entitled to their costs and attorneys' fees incurred to litigate this action pursuant to Sections 9 and 15 of the Agreement.

THIRD CAUSE OF ACTION
Breach of Contract No. 2

38. Plaintiffs reallege and incorporate by reference the allegations set forth above as though fully restated herein.

39. Plaintiffs and Defendant Holmes are parties to the Agreement. Exhibit 1.

40. Ms. Holmes entered in the Agreement in bad faith in violation of Section 11 with the aim of collecting the settlement sum and without the intent to honor her obligation to stop disparaging Mr. Armstrong and his handling of his father's Trust.

41. Ms. Holmes' bad faith intentions are demonstrated by:

(1) the timing of her defamatory remarks (they started almost immediately after the Settlement Agreement was signed).

(2) their repeated frequency, number, and extent (made to Spencer, Plaintiffs' counsel, and other family members).

(3) the nature of the statements (which include serious accusations of criminal wrongdoing such as theft, fraud, and elder abuse and also threats).

(4) they continued even after multiple demands by Plaintiffs, including one in writing, that she cease and desist.

(5) Ms. Holmes' own admission as stated in her text of July 13, 2022 to Plaintiffs' counsel wherein she accused Plaintiff Armstrong of "tax evasion" and

1 affirmed that "I don't care if I lose every penny[.] I must have the truth in order to
2 move forward." Exhibit 2 at ARMSTRONG 0029.

3 42. Defendant Holmes has breached, and continues to breach, her duties under
Section 11 of the Agreement, and in defiance of a cease and desist instruction from
5 Plaintiffs' counsel, thereby excusing Plaintiffs from performing theirs.
6

7 43. Plaintiffs have sustained damages as a foreseeable result thereof of these
breaches, in an amount to be proven at trial.
8

9 44. Plaintiffs have been forced to hire the law firm of Stephenson Law, PLLC to
10 prosecute this action and, as such, Plaintiffs are entitled to their costs and attorneys' fees
11 incurred to litigate this action pursuant to Section 15 of the Agreement.
12

13 V.
14 PRAYER FOR RELIEF

15 Plaintiffs pray for judgment as follows:

- 16 1. General damages exceeding \$25,000.00 in an amount to be proven at trial;
17 2. Compensatory damages exceeding \$25,000.00 in an amount to be proven at trial;
18 3. Punitive damages, if determined to be available under the law, in an amount to be
19 proven at trial;
20 4. Pre-judgment and Post-judgment interest at the maximum amount permitted by
21 law;
22 5. Injunctive relief; and
23 6. Any other relief, legal or equitable, **to include but not limited to, rescission,**
24 **annulment, reformation, and/or equitable estoppel** deemed fair, necessary, and
just by the Court.

25 ///
26
27 ///
28

JURY TRIAL DEMAND

Plaintiffs hereby request a jury trial for all applicable claims.

DATED: February 20, 2023

STEPHENSON LAW, PLLC

John Neil Stephenson

By: John Neil Stephenson
Its: Managing Member
Counsel for Plaintiffs/Counterdefendants

EXHIBIT LIST

Ex.	Description	# of Pages
1	Settlement Agreement and Release - May 9, 2022	19
2	Text messages from Defendant Holmes to Plaintiffs' counsel – May to July 2022	10
3	Text messages from Defendant Holmes to Spencer Armstrong – July 2022	13
4	Email from Defendant Holmes to Plaintiffs' counsel – July 13, 2022	1

CERTIFICATE OF SERVICE

Under the penalty of perjury, the undersigned hereby declares that, on the date indicated below, the foregoing **PLAINTIFFS/COUNTERDEFENDANTS' SECOND AMENDED COMPLAINT** was filed through the Court's CM/ECF electronic filing system to be automatically served on:

Counsel for Defendant Holmes

Bradley S. Slighting, Esq.
BOYACK LAW GROUP
1707 Village Center Circle, # 100
Las Vegas, NV 89134
Ph. 702-744-78474
Email: Bradcmslightinglaw.com
Of Counsel

Mark B. Pyper, Esq.
BARTON PYPER, P.L.L.C.
4747 E. Elliot Road, Ste. 29-517
Phoenix, AZ 85044
Ph. (602-615-1841
Email: pyperlaw@aol.com
Pro Hac Vice

DATED: February 20, 2023

STEPHENSON LAW, PLLC

John Neil Stephenson

By: John Neil Stephenson
Its: Managing Member
Counsel for Plaintiffs/Counterdefendants